IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

TARACHAND VERSUS. STATE OF RAJASTHAN

S.B. Criminal Appeal No.35/2007 under Section 454 Cr.P.C. against the Judgment dated 13.9.2006 in Sessions Case No.13/2006(11/06) passed by Sh. Ashok Kumar Jain, RHJS, Additional Sessions Judge (Fast Track) Anupgarh District Sri Gangangar.

DATE OF JUDGMENT : 5.4. 2007.

P R E S E N T

HON'BLE MR.JUSTICE CHATRA RAM JAT

Mr. N.L.Joshi, counsel for the appellant.
Mr.J.P.S.Choudhary ,P.P.

BY THE COURT:

1. This appeal is directed against the judgment and order dated 13.9.2006 passed by the Additional Sessions Judge Fast Track, Anupgarh District Sri Gangangar, whereby he acquitted the accused appellant for the charges under sections 307 IPC and 21/25 & 27 Indian Arms Act 326 IPC but forfeited the gun of the appellant on the ground that at the present there is no effective licence of the

gun so he ordered to for the confiscation of gun vide order dated 13th September 2006.

2. The prosecution story is woven like this:-

On 20.3.06 S.H.O. Rawla filed a challan against the accused appellant before the Judicial Magistrate First Class, Gharsana and on the same day case was committed to the Court of Additional Sessions Judge,Anupgarh where on 3.4.06 this case was registered as Sessions case No.11/06 thereafter by the order of the Sessions Judge, Sri Gangangar, this case has been transferred to trial Court for disposal on 24.5.2006

On 15.1.2006 A.S.I. Of P.S.Rawla Shri Narain Singh recorded a Parcha Bayan (Ex.P.1) of Norang Ram s/o Hanutaram Meghwal resident of 5 K.H.M who was under treatment in Govt. Hospital, Sri Gangangar. Norang Ram stated that on 14.10.2006 about 1.30 O'clock he went for cutting grass for animals in Rohi 7 K.H.M.which field of Balu Ram Meghwal, the land was un-command so he was cutting grass there and about 3 P.M. a fire of gunshot passes touching through his hand then he look towards that side and saw that about 10 paces away, Tarachand s/o Chotu Ram by caste Bawari resident of 2 M.L.D. was standing with gun in his hands, who has fired and he sustained gun shot injury. Then Tarachand ran away. Tarachand was doing guard duty for the agricultural fields and he know him prior to incident. There after he

called Ram Chandra, Bhoora Ram and Gopi Ram who took him to hospital for treatment in Rawla hospital and from where he was referred to Govt. Hospital Sri Ganganagar.

On the basis of this paracha bayan (Ex.P.1) F.I.R. No.13/06 was registered. Police started investigation and prepared map of incident, injury report, X-ray report and X-ray plate which are in record.Accused was arrested and Gun M.L. Was recovered which was sent for F.S.L. Examination and thereafter charge sheet was filed for offence under Section 307IPC and 21/25 & 27 Indian Arms Act. Accused denied for offence and claimed for trial.

Prosecution has produced 5 witnesses viz. P.W. 1 Norang Ram P.W.2 Devi lal, PW3Ram chandra,4 Amarjeet PW 5 Jagmeet Singh and Ex P1 to Ex P10 documents were produced. Thereafter and statement of these witnesses recorded. Thereafter statement under Section 313 Cr.P.C. was not recorded as no evidence was against the accused appellant and accused has not produced any defence witnesses.

3. In this case counsel for the appellant has only challnege the order of confiscation of gun which was forfeited on the ground that at present there is no effective licence of the gun with the accused appellant therefore, it was ordered to be confiscated vide judgment dated 13.9.2006.

4. Heard the learned counsel for the appellant and the learned

Public Prosecutor and perused the record of the case .

5. Per contra, learned Public Prosecutor supported the impugned finding and urged that the gun was rightly confiscated as the accused appellant was not having effect licence at the relevant time but stated that after getting proper licence,order may be quashed for confiscation of gun subject to production of a valid licence.

6. Learned counsel for the appellant stated that admittedly the gun licence was expired on 11.12.2005 but that licence has been renewed after this judgment dated 13.9.2006 by the Tehsildar cum Executive Magistrate, Gharsana. On 12.11.2006 and because of renewal of the licence, the order of confiscation of the said gun by the trial court may be quashed subject to production of the up to date valid licence of gun and gun should be returned to the appellant.

7. After going through the submissions of the counsel for the appellant and facts of the case, admittedly on the date of judgment, the licence of the gun was not valid and it was expired but later on, as mentioned above, has been renewed on 12.11.06 but unfortunately that too is again expired on 11.12.2006 because of the said renewal of licence was of 12.11.2006, therefore, order of trial court for confiscation of gun cannot be maintained and that order deserve to be set aside to the extent of confiscation of gun.

8. Accordingly, this appeal is allowed and the order of the Additional Sessions Judge (Fast Track) Anupgarh District Sri Gangangar dated 13.9.2006 in Sessions Case No.13/2006 (11/06) is set aside to extent of confiscation of gun only and there is no appeal for other part of the judgment so no opinion is expressed for that part. The appellant Tarachand is directed to produce up to date renewed and valid gun licence of the said gun up to August 2007 before the learned trial Court then trial court return the gun to the appellant- Tarachand.

[CHATRA RAM JAT],J.

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